HON'BLE SRI JUSTICE K.G.SHANKAR

C.M.A.No.4400 of 2004

JUDGMENT:

This is the appeal from the insurer. The claim was made in M.V.O.P.No.315 of 1996 on the file of the Chairman-Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur (for short 'the Tribunal'), by the dependants of the deceased-Chundi Chenna Reddy. While compensation was sought for at Rs.8,25,000/-, the Tribunal awarded compensation at Rs.5,68,500/-. The insurer laid this appeal questioning the quantum of compensation awarded.

2. The first claimant was the widow of the deceased. Claimants 2 and 3 were the minor children of the deceased. Claimants 4 and 5 were the parents of the deceased. The deceased was 34 years old at the time of his death. He was said to be an R & B Contractor and was earning Rs.1,50,000/- per annum.

3. On 12.04.1995, while the deceased was proceeding on scooter bearing registration No. A.P 7A 9784, the offending lorry bearing registration bearing No. AAP 4944 was driven in a rash and negligent manner by the driver of the lorry. The lorry dashed the scooter of the deceased near Bright Metal Industry. The deceased met with instantaneous death in the accident.

4. The claimants contended that the deceased was a share holder and a working partner in M/s.Ch.Chennakesava Reddy and Company and that he used to earn Rs.60,000/- per annum as his share and that he was also earning salary as a working partner to a tune of about Rs.30,000/- per annum. The deceased thus was said to be earning about Rs.90,000/- per annum.

5. Added to it, the deceased was said to possess Ac.18.00

cents of fertile land. He used to earn Rs.1,00,000/- from agriculture. Contending that the accident leading to the death of the deceased brought financial loss to the claimants in all fronts, the claimants sought for compensation at Rs.8,25,000/-.

6. As already pointed out, there is no dispute regarding the mode and manner of the accident or about the liability of the insurer to satisfy the claim of the dependants of the deceased. The controversy is with regard to the quantum of compensation.

7. The learned Chairman granted interest at 9% per annum over the awarded amount. In view of the **New India Assurance Co.Ltd., v. Gopali**[1]., the claimants are entitled to interest at 9% per annum where the Supreme Court considered that interest could be as high as 12% per annum.

8. Regarding the basic quantum, it is the case of the insurer that the income tax returns cannot be taken into consideration and that the agricultural income of the deceased also shall not form part of the compensation.

9. The learned trial Judge considered that there was no loss of income so far as the agricultural properties are concerned. It may be noticed that it is the case of the claimants that the deceased was a working partner in M/s. Ch.Chennakesavareddy and Company. There is no whisper in the evidence on behalf of the claimants that the deceased was personally cultivating Ac.18.00 cents of land belonging to him. Consequently, the question of the claimants suffering any loss on account of the death of the deceased so far as the agricultural income is concerned does not arise. The trial Court also concluded that there was no loss of income in respect of the agricultural income on account of the death of the deceased. The trial Court did not award any compensation in favour of the claimants towards loss of income

from agricultural properties.

10. Although P.W.1 contended that the deceased was working as a contractor and was earning Rs.90,000/- in all per annum, Exs.A.5 to A.9, income tax statements, show that the deceased was earning Rs.54,052/- as his income apart from agricultural income. The trial Court rounded off the same to Rs.54,000/-. I do not see any reason to differ from the view taken by the trial Court in this regard.

11. It is urged on behalf of the insurer-appellant that the trial Court placed reliance upon Ex.A.5 and that Ex.A.5 has not been proved. P.W.3 is an Income Tax practitioner. He deposed that he has been looking after the income tax matters of the deceased. P.W.3 proved Exs.A.5 to A.9. I, therefore, agree that the income of the deceased deserves to be determined at Rs.54,000/- per annum.

12. The deceased was said to be 40 years old at the time of his death. Ex.A.3 certified copy of the post mortem report described the deceased to be approximately 40 years old. When the deceased was about 40 years old, multiplier 15 would be the appropriate multiplier in terms of **Sarala Verma v. Delhi Transport Corporation**[2]**.** The trial Court adopted the same multiplier and determined the total amount that the deceased would have earned at Rs.8,10,000/- per annum. The trial Court deducted 1/3rd of the income towards the personal and living expenses of the deceased. Where there are as many as 5 dependants, it would have been appropriate to deduct 1/4th of the income of the deceased towards personal and living expenses. Where, however, there is no appeal from the claimants, I uphold the calculation of the trial Court in deducting 1/3rd of the income towards personal and living expenses of the deceased. Out of the total amount of Rs.8,10,000/-, Rs.2,70,000/- is deducted towards personal and living expenses. The balance is Rs.5,40,000/-.

The claimants shall be entitled to compensation at Rs.5,40,000/- towards loss of income and future expectancy of life.

13. The trial Court awarded Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.1,500/- towards transport charges and Rs.2,000/- towards funeral expenses and concluded that the claimants are entitled to compensation at Rs.5,68,500/-. As rightly submitted by Sri M.Koteswara Rao, learned counsel for the claimants, the amount awarded by the trial Court is quite justified and there cannot be any ground to reduce the amount of compensation already awarded in favour of the claimants.

14. It may be noticed that the claimants in their turn filed cross objections. It was held by a Division Bench of this Court recently that cross objections are not maintainable under the provisions of the M.V.Act.

15. Sri M.Koteswara Rao, learned counsel for the claimants strenuously contended that cross objections, indeed, are maintainable in this case. He tried to distinguish the view of the Division Bench in **New India Assurance Co.Ltd. v. Vasireddy Sujatharani**[3]. In **Government of Andhra Pradesh v. K.Padma Rani**[4], a Division Bench of this Court held that cross objections are maintainable. However that view was taken with reference to the old Motor Vehicles Act of 1939. Subsequently, in **T.Balaiah v. Abdul Majeed**[5], a single Judge of this Court reiterated that Order 41 Rule 22 C.P.C. applies to the old M.V Act of 1939 and that the cross objections consequently are maintainable under the M.V Act. Both these decisions are under the old Motor Vehicles Act. The latest decision on this point from this Court is the decision already referred to(3rd supra). In Vasireddy Sujatha Rani, the Division Bench held that the cross objections cannot be maintained when the appeal itself is not maintainable.

16. The learned counsel for the claimants contended that the Court held that cross objections are not maintainable in the event the very appeal is not maintainable. I am afraid that this contention is not correct. In para 13 of the judgment, the Division Bench referred to a decision of this Court and also quoted the view of a decision of the Madhya Pradesh High Court. However, in para 22, the Division Bench concluded that cross objections are not maintainable under the provisions of the Motor Vehicles Act. Consequently, I do not agree with the contention of the learned counsel for the claimants that the cross objections deserve to be considered. The cross objections consequently are dismissed as not maintainable.

17. The C.M.A is found to be devoid of merits and it is accordingly dismissed for the reasons set out above. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

JUSTICE K.G. SHANKAR

Dt.29th August, 2012.
Vjl

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[1] Civil Appeal No.5179 of 2012, Dt.05.07.2012 before the Supreme Court.
[2] 2009 A.C.J 1298
[3] 2011(5) ALD 156
[4] 1975(1)APLJ 258
[5] 1994 (2) ALT 435